

AGENDA

Cumberland Town Council Meeting

Town Council Chambers

MONDAY, July 13, 2009

6:00 p.m. Workshop

8:00 p.m. Call to Order

6:00 – 8:00 p.m. WORKSHOP with Planning Board and Comprehensive Plan Committee to review new Comprehensive Plan draft.

I. APPROVAL OF MINUTES

June 22, 2009

II. MANAGER'S REPORT

III. PUBLIC DISCUSSION

IV. LEGISLATION AND POLICY

09 – 101. To set a Public Hearing date (*July 27th*) to consider and act on a Consent Decree for properties located at 52 Idlewood Drive, Map R05/Lot C8 and 74 Idlewood Drive, Map R05/Lot C8.

09 – 102. To set a Public Hearing date (*July 27th*) to consider and act on a Consent Decree for property located at 486 Greely Road Extension, Map R06/Lot 39B.

09 – 103. To set a Public Hearing date (*July 27th*) to consider and act on certain amendments to the 2007 – 2010 Agreement between the Town of Cumberland and the Cumberland Police Benevolent Association.

09 – 104. To set a Public Hearing date (*July 27th*) to consider and act on a recommendation from the Twin Brook Committee re: amendments to the Twin Brook Recreation Facility Use Policy.

09 – 105. To set a Public Hearing date (*July 27th*) to consider and act on adopting a Stormwater Discharge Ordinance.

09 – 106. To set a Public Hearing date (*July 27th*) to establish fees for the

Town of Cumberland Yard Waste Facility, to become effective *August 1, 2009*.

09 – 107. To authorize the Town Manager to enter into a lease/purchase agreement with Komatsu Financial Limited Partnership for a front-end loader.

09 – 108. To appoint members to the Village Center Committee.

V. NEW BUSINESS

VI. EXECUTIVE SESSION – pursuant to M.R.S.A., Section 405(6)(D) re: contract negotiations between the Town and the Cumberland Police Benevolent Association.

VII. ADJOURNMENT

MINUTES

Cumberland Town Council Meeting

Town Council Chambers

MONDAY, June 22, 2009

6:00 p.m. WORKSHOP re: Yard waste facility fees and Victualer's License fee increases and discussion re: potential Consent Decrees for 52 & 74 Idlewood Drive.

7:00 p.m. – Call to Order

Present: Chairman Copp, Councilors Turner, Storey-King, Perfetti, Porter, and Stiles.

Excused: Councilor Moriarty.

I. APPROVAL OF MINUTES

June 1, 2009

Motion by Councilor Stiles, seconded by Councilor Perfetti, to approve the minutes as presented.

VOTE: UNANIMOUS PASSAGE 6-0

June 15, 2009

Motion by Councilor Stiles, seconded by Councilor Storey-King, to approve the minutes as amended.

VOTE: UNANIMOUS PASSAGE 6-0

II. MANAGER'S REPORT

- M.S.A.D. Election results review
- Opposition to the Credit Union is moving forward with lawsuit charging the municipal officers did not follow town's Comprehensive Plan.
- Range Road Update - continuing work on Range Road, tree cutting began last Wednesday, road grinding this week from Winn Road to Idlewood Road. Range Road is closed from Win Road 2000 feet toward Idlewood. Work will move toward Idlewood another 2,000 feet with each phase.
- Received 4.5 inches of rain last Friday and many drainage systems had difficulty managing the significant rainfall. Flooding occurred mostly on state roads. An incident occurred on Greely Road Extension where a pedestrian slipped and fell near a culvert and was reported to have been caught in the culvert overflow.

III. PUBLIC DISCUSSION

None.

IV. LEGISLATION AND POLICY

09 – 091 To hold a Public Hearing to consider and act on repealing Section 423 (Shoreland Areas) of the Cumberland Zoning Ordinance, and establishing a stand alone Shoreland Zoning Ordinance.

Code enforcement Officer, William Longley, explained the Board of Environmental Protection approved amendments to their Guidelines for Municipal Shoreland Zoning Ordinances in February 2006 requiring municipalities to update local ordinances to conform to the amended guidelines. There were several areas where the town could choose to adopt a more or less restrictive provision and in all of those instances, the town chose the least restrictive option. The one map change is an increase in the amount of land designated as Resource Protection around Knight's Pond; however, the DEP is reviewing this designation based on an abutting property owner's concern over the impact to his land value by this designation. Code Enforcement Officer Longley recommended the council remove the shoreland section of the zoning ordinance

and “make it a stand alone ordinance” ... “easier to understand by the average citizen.” Substantive changes made to the ordinance include new setbacks along the Coastal Bluffs such as the Foreside. Soils designated “unstable” or “highly unstable” require a 75 setback from the top of the slope; new requirements for clearing of vegetation within the shoreland area up to 250 feet from the waters edge; requirements for replanting if vegetation is removed within the setback/buffer area in order to relocate a structure; and a return to the State of Maine Forestry Department regulations for timber harvesting in the future. No public comments received.

Councilor Storey-King asked, “What should I be aware of” with respect to the stream protection area. Code Enforcement Officer Longley replied the state and town have limitations regarding cutting of vegetation within 75 feet of the stream. “Those rules aren’t changing.” A new home construction would require a 75 foot setback. Ground cover is considered vegetation.

Motion by Councilor Porter, seconded by Councilor Turner, to repeal Section 423 (Shoreland Areas) of the Cumberland Zoning Ordinance, adopt Zoning Map changes for Shoreland Zoning Resource Protection, and create a stand alone Shoreland Zoning Ordinance, as recommended by the Planning Board.

VOTE: UNANIMOUS PASSAGE 6-0

09 – 092 To hold a Public Hearing to consider and act on a Wharfing Out Permit for Holly Thibodeau, Sturdivant Island, Map I-08, Lot 3-B.

The Manager deferred to Coastal Waters Commission spokesman Peter Dion who explained a Wharfing Out Permit application was received from Ms. Holly Thibodeau of 13 Ledge Road for property located on Sturdivant Island. The applicant requested to construct and maintain a permanent wooden 6’ x 16’ pile and timber pier with two 70’ aluminum pier head extensions and a 45’ aluminum ramp extension from the end of the pier resting on a 12’ x 16’ bottom-moored wooden float. During the off season, the ramp will be stored on the pier and the float will be hauled out of the water and stored in the upland on a 10’ x 16’ open timber frame float haul out. The commission held a site walk on June 15, 2009. The following four items were addressed and recommended as conditions by the Commission: provide right, title and interest; stabilization through erosion controls; haul off of float/float storage and no permanent placement within the intertidal zone; vegetation removal minimized; design change due to location crossing the riparian line between this and an abutting property so as not to interfere with the riparian line; and property owner and designer must obtain a building permit upon approval. With placement of these conditions, the commission “is very satisfied that it’s a complete application.” No public comments received

Motion by Councilor Turner; seconded by Councilor Storey-King, to approve the Wharfing Out Permit for Holly Thibodeau, Sturdivant Island, Map I-08/Lot 3B with the following conditions:

1. The owner shall provide Right, Title and Interest related to the Riparian Zone;
2. The area beneath the stairway shall be stabilized with either erosion control mix, filter fabric and crushed stone to mitigate potential erosion;
3. The float haul off (or slides) for the storage of the float shall be located in northern cove as attached to these minutes. No portion of the structure shall be permanently anchored or positioned in the intertidal zone. The approval shall be conditioned upon maintenance of the haul-off structure. If the structure is not maintained or left in disrepair, the float shall be stored offsite. Vegetation removal shall be minimized and only removed for the construction of the haul-off rail system; and
4. The applicant shall conform to all local ordinances including but not limited to the application and approval of a building permit for this structure.

VOTE: UNANIMOUS PASSAGE 6-0

09 - 093 To award a contract to Gorrill-Palmer Consulting Engineers for engineering of the Route 88 drainage and shoulder improvement project.

Town Manager Shane deferred to Route 88 Bike & Pedestrian Committee Chairman Michael Lebel and recognized Julie Restucci's instrumental work on Tuttle Road. Mr. Lebel stated the committee received three responses to the drainage and shoulder improvement project Request For Proposals (RFP) and interviewed each responding engineering firm with scoring criteria as follows: Cost/Budget – 25 points; experience – 10 points; overall project understanding – 40 points; interview – 15 points; overall quality of presentation – 10 points; and first reaction scores – 10 points. The heaviest consideration was given to “whether they understood the nature and importance of the project.” The committee voted unanimously to award the bid to Gorrill-Palmer Engineers of Gray, Maine. Gorrill-Palmer was also the low bidder. The committee felt Gorrill-Palmer was able to bring “creative responses and resources to the project that the other bidders were not.” Councilor Turner and Chairman Copp also attended the interviews. No public comments received.

Motion by Councilor Perfetti, seconded by Councilor Turner, to award a contract to Gorrill-Palmer Consulting Engineers for engineering services for the Route 88 Drainage and Shoulder Improvement Project in the amount of \$144,473.00.

VOTE: UNANIMOUS PASSAGE 6-0

09 – 094 To hold a Public Hearing to consider and act on a recommendation from the Planning Board re: amendments to the Fairgrounds Overlay District to allow concerts & pari-mutuel horse racing.

Town Manager Shane explained the town council has discussed this request on several occasions over the last few months. He thanked Fairgrounds President Bruce Flanigan for his cooperation during this process. Mr. Flanigan explained the fairgrounds is requesting two amendments to its overlay district: the first is the addition to permit pari-mutuel horse racing, which “could occur” but is not a certainty. The second change would permit concerts at the fairgrounds. The Planning Board recommends approval of the proposed changes and requests the Town Council review the Mass Gathering Ordinance as follows: to add standards to review noise and hours of operation; to add “.21 Pari-Mutuel Horse Racing” to the list of defined uses in Section 204.18; consider adopting a definition for pari-mutuel horse racing to Section 104, Definitions; and add “.20 Concerts” to Section 204.18, Fairgrounds Overlay District, providing necessary changes are made to the Mass Gathering Ordinance to address issues such as sound and hours of operation. Mr. Flanigan relayed the Farmers Club's appreciation of support from the Manager, Town Council and public. These amendments will allow the fairgrounds to increase their revenue stream which will in turn help them to maintain the excellent condition of the fairgrounds. No public comments received. Councilor Storey-King noted that during the many hearings, the public and neighbors expressed support, which she noted, “does not happen very often. It was really nice...that your neighbors showed up to support you.”

Motion by Councilor Porter, seconded by Councilor Perfetti, to amend Section 204.18 of the Cumberland Zoning Ordinance (Fairgrounds Overlay District) to permit concerts and pari-mutuel horse racing.

VOTE: UNANIMOUS PASSAGE 5-0-1 (Councilor Stiles abstained)

09 – 095 To hold a Public Hearing to consider and act on increasing yard waste facility fees, effective July 1, 2009.

Town Manager Shane stated a workshop to discuss yard waste fees was held earlier this evening and at this time he recommends a punch ticket system. The tickets will be sold at local stores for a fee of \$5 for a single axle; \$10 for a double axle; and \$25 for a six-yard dump truck. Because of the newness of this proposal he recommended the town advertise the new fees and create an adoption date of July 1st. The town will accept car batteries and motor oil for no fee, but will not transport any more leaves and grass for composting; instead we will compost on site. The council received two emails in opposition to these fees. No comments received during the meeting.

Motion by Councilor Porter; seconded by Councilor Turner, to table this item.

VOTE: UNANIMOUS PASSAGE 6-0

09 – 096 To hold a Public Hearing to consider and act on increasing Victualer's License fees for FY'10.

As stated during the earlier workshop Town Manager Shane indicated there is no "urgency" to adopt fee increases this evening, and recommended tabling this item to a later date.

Motion by Councilor Stiles; seconded by Councilor Perfetti, to table.

VOTE: UNANIMOUS PASSAGE 6-0

09 – 097 To hold a Public Hearing to consider and act on annual Victualer's Licenses for the period of July 1, 2009 – June 30, 2010.

The council received a list of annual license renewals for consideration and approval this evening. Manager Shane introduced the owners of Nutmeg Foods, Mr. and Mrs. Hamilton, who informed the council they are a wholesale chocolate company housed currently in South Portland, moving "closer to home" at 7B Corey Road. They sell chocolate bars and truffles and clients include LL Bean and Whole Foods. Councilor Stiles noted that he submitted the 4H application to the Clerk today. No public comments received.

Motion by Councilor Perfetti; seconded by Councilor Stiles, to approve the annual Victualer's Licenses as provided for the period of July 1, 2009 through June 30, 2010.

VOTE: UNANIMOUS PASSAGE 6-0

09 – 098 To hold a Public Hearing to consider and act on a Mass Gathering Permit and Victualers Licenses for the United Maine Craftsmen's 40th Annual Cumberland Arts & Crafts Show, August 13, 14, 15 & 16, 2009 at the Cumberland Fair Grounds.

The Town Manager recommended approval of this annual event. The application is complete and in order for approval. No public comments received.

Motion by Councilor Stiles, seconded by Councilor Storey-King, to approve the Mass Gathering Permit and Victualer's Licenses for the United Maine Craftsmen's 40th Annual Cumberland Arts & Crafts Show, August 13 – 16, 2009 at the Cumberland Fairgrounds.

VOTE: UNANIMOUS PASSAGE 6-0

09 – 099 To hold a Public Hearing to consider and act on Tax Anticipation Note borrowing.

The Manager recommended the council award the Tax Anticipation Note borrowing to low bidder Bath Savings, at a 1.83% interest rate. This is a “very aggressive bidding climate.” This year’s tax anticipation borrowing is \$3 million and is necessary to “buffer the highs and lows of our tax collection seasons.” This amount is also \$300,000 less than last year, owing to an improved overall fund balance of the town. The funds are disbursed on an as-needed basis and will begin to be disbursed in mid-July of 2009. No public comments received.

Motion by Councilor Stiles, seconded by Councilor Turner, to authorize a Tax Anticipation Note borrowing in the amount of \$3,000,000 (three million) for FY 2010 and award the tax note to Bath Savings Bank at an interest rate of 1.83%, per the resolution (see below) from the Town’s Bond Counsel.

VOTE: UNANIMOUS PASSAGE 6-0

ORDERED, that pursuant to Section 5771 of Title 30-A of the Maine Revised Statutes, as amended, the Town Treasurer is hereby authorized and empowered to borrow money from time to time during the fiscal year ending June 30, 2010 in the principal amount or amounts not exceeding \$3,000,000 at any one time outstanding, in anticipation of the collections or receipts from taxes, by the issuance of tax anticipation notes of the Town, each of which notes shall be designated “Town of Cumberland 2010 Tax Anticipation Notes.” All of such tax anticipation notes, and any extensions, renewals or replacements thereof, shall be signed by the Town Treasurer and counter-signed by the Chair of the Town Council, shall be payable on or before June 30, 2010, out of money raised by taxation during the fiscal year ending June 30, 2010, shall bear interest payable at maturity at a rate determined in the manner as approved by the Treasurer, and shall contain such other terms and provisions, not inconsistent herewith, and be in such form, as shall be approved by the officers signing the same, whose approval shall be conclusively evidenced by their execution thereof, and

BE IT FURTHER ORDERED, that the Treasurer is hereby authorized to negotiate the interest rate, maturity and other terms and conditions of the notes with whatever financial institutions the Treasurer deems appropriate and to award the notes to such financial institution or institutions, and

BE IT FURTHER ORDERED, that the notes authorized by the foregoing are hereby designate as qualified tax exempt obligations for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended, and

BE IT FURTHER ORDERED, that the Treasurer of the Town be authorized to covenant with the purchasers of the notes on behalf of the Town and for the benefit of the holders of the notes that the Town will take whatever steps, and refrain from taking any action, as may be necessary or appropriate to ensure that interest on the notes will remain free from federal income taxes, including without limitation, the filing of information returns and reports with the Internal Revenue Service and the payment of any rebate due to the United States of America.

09 – 100 To consider and act on Commercial Hauler’s License renewals for FY’10.

The Town Manager recommended the provided list of commercial haulers receive a renewed license for the 2010 fiscal year. No public comments received.

Motion by Councilor Perfetti, seconded by Councilor Stiles, to renew the Commercial Hauler’s Licenses for fiscal year 2010.

VOTE: UNANIMOUS PASSAGE 6-0

V. NEW BUSINESS

Councilor Turner – shared the Manager’s expressed disappointment re: the lawsuit against the town over the Credit Union after a 35% voter turnout with 80% in support.

Councilor Porter – nominating committee met Monday evening and will meet again tomorrow to finalize the Village Center Committee interviews; attended Cumberland Historical Society meeting last week where his daughter received a college scholarship and he saw some wonderful older photos which he recommended posting to CH 2; echoed Councilor Turner’s comments re: the credit union lawsuit; “it’s unfortunate.”

Councilor Storey-King – was remiss last meeting to thank her supporters for her re-election; “it was nice to beat the boys”; congratulated Greely Baseball Team for their second state title in three years; “you earned what you deserve”; reminder for dog owners who use Twin Brooks – we encourage dogs on the Greely Road side; also, please pick up dog waste.

Chairman Copp- West Cumberland “things are really starting to take shape...really looking good”; grinding was stopped due to weather; paving will follow the first of next week.

Councilor Stiles – requested Code Enforcement Officer provide a comparison of current year’s building permit numbers to last year’s permit numbers; particularly end of year comparisons; yard sale held this past weekend at intersection of Gray Road and Range Road at the Hart Association Building and traffic became “particularly congested”; reported as extremely dangerous; a safety issue that should be remembered in the future; Councilor Turner concurred with the safety concerns; Town Manager will send a letter asking for their cooperation in the future.

Town Manager Shane – will ask Representative Strang Burgess to speak to council at future meeting regarding November 2010 ballot questions.

VI. EXECUTIVE SESSION pursuant to 1 M.R.S.A., § 405 (6) (C) re: real property acquisition.

Motion by Councilor Stiles, seconded by Councilor Storey-King, to move to Executive Session pursuant to Title 1 M.R.S.A. § 405(6)(C) re: real property acquisition.

VOTE: UNANIMOUS PASSAGE 6-0

TIME: 8:05 p.m.

Motion by Councilor Stiles, seconded by Councilor Porter, to return from Executive Session.

VOTE: UNANIMOUS PASSAGE 6-0

TIME: 8:18 p.m.

VII. ADJOURNMENT

Motion by Councilor Stiles, seconded by Councilor Perfetti, to adjourn.

VOTE: UNANIMOUS PASSAGE 6-0

TIME: 8:18 p.m.

Respectfully submitted,

Nadeen Daniels, CMC
Cumberland Town Clerk